

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION

SANDRA GANN,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.:
v.	)	
	)	
TRISTAR PRODUCTS, INC.,	)	(Removed from the Circuit Court of Linn
	)	County Missouri, Case No. 17LI-CC-00020)
Defendant.	)	

**NOTICE OF REMOVAL**

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI NORTHERN DIVISION**

**PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453 Defendant TRISTAR PRODUCTS, INC. (“Tristar”), by and through its attorneys, on this date hereby timely files this Notice of Removal of the above-captioned State Court Action from the Circuit Court of Linn County, Missouri, to the United States District Court for the Eastern District of Missouri, Northern Division together with all process, pleadings, and orders, as required by 28 U.S.C. § 1446(a). In support of this Notice, Tristar respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff Sandra Gann (“Plaintiff”) commenced this action on May 23, 2017 in the Circuit Court of Linn County, Missouri, Case No. 17LI-CC00020, against Defendant Tristar Products, Inc. (“Tristar” or “Defendant”).

2. Plaintiff served Tristar with the Summons and Class Action Petition (“Petition”) on July 14, 2017. A true and accurate copy of the Plaintiff’s Summons and Petition (including all process, pleadings and orders served on Tristar), is attached hereto as **Exhibit “A”**. True and

accurate copies of all other pleadings currently on file in the State Court Action are attached hereto as **Exhibit “B”**.

3. This Notice of Removal is timely because it is filed within thirty (30) days of Defendant’s receipt of the initial pleading, as required by 28 U.S.C. § 1446(b).

4. As explained more fully below, this is a putative class action of which this Court has original jurisdiction under 28 U.S.C. § 1332 (d)(2), and which may be removed to this Court by Tristar pursuant to 28 U.S.C. §§ 1441, 1446 and 1453.

### **DIVERSITY OF CITIZENSHIP**

5. Plaintiff alleges in her Class Action Petition that she is a resident of Linn County, Missouri (See Ex. A, Class Action Petition, at ¶1), and Tristar alleges on information and belief that Plaintiff is a citizen of Missouri.

6. Defendant, Tristar, is incorporated in the State of Pennsylvania and maintains its principal place of business in Fairfield, New Jersey. Therefore, Tristar is a citizen of Pennsylvania and New Jersey.

7. Complete diversity of citizenship therefore exists between the parties for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a).

### **AMOUNT IN CONTROVERSY**

8. Plaintiff filed this lawsuit on behalf of herself and on behalf of a proposed class of all Missouri consumers who purchased Tristar Power Cookers or Power Pressure Cooker XLs in Missouri from May 23, 2012 through May 23, 2017:

“Pursuant to Missouri Supreme Court Rule 52.08, Plaintiff brings this class action and seeks certification of the claims on behalf of the following class:

Citizens of Missouri who purchased a Power Cooker or Power Pressure Cooker XL in the State of Missouri within the five-year period immediately preceding the filing date of this action.”

Ex. A, Class Action Petition, ¶ 54.

9. Among the relief Plaintiff seeks for herself and the putative class is restitution and rescission. Ex. A, Class Action Petition, ¶ 60f, 74, and 80.

10. Plaintiff alleges that she and her husband paid approximately \$99.99 for their Power Cooker (Ex. A., ¶ 42), that this amount was a premium compared to other pressure cookers available on the market (Id., ¶50) and that the actual value of Tristar Power Cookers and Power Pressure Cooker XLs is zero. Id., ¶ 52.

11. For the five year period immediately preceding the filing of Plaintiff’s lawsuit, i.e., from May 23, 2012 through May 23, 2017, Tristar’s aggregate sales of Power Cookers and Power Pressure Cooker XLs to consumers in Missouri, via retail sales and direct to consumer internet sales, exceeded \$5,000,000.

12. Therefore, the amount in controversy in this action exceeds \$5,000,000.

**THE PUTATIVE CLASS EXCEEDS 100 MEMBERS**

13. Plaintiff alleges that the class members of the putative class she seeks to represent are “. . . so numerous that their individual joinder is impracticable” and that “the precise number of Class members and their identities are unknown to Plaintiff”, but will be “determined through discovery.” Ex. A, Class Action Petition, ¶ 59.

14. For the five year period immediately preceding the filing of Plaintiff’s lawsuit, i.e., from May 23, 2012 through May 23, 2017, Tristar sold the Power Cooker and Power Pressure Cooker XL to many thousands of Missouri customers.

15. Therefore, the putative class consists of more than 100 members.

**THIS COURT HAS JURISDICTION UNDER CAFA**

16. This Court has jurisdiction under 28 U.S.C. § 1332(d) because this is a putative class action with more than 100 putative class members, the parties are citizens of different States, and the amount in controversy exceeds \$5,000,000, exclusive of costs and interest. 28 U.S.C. §1332 (d)(2)(A), 5 (B); *Dart Cherokee Basin Operating Company, LLC v. Owens*, 133 S.Ct. 547, 552, 190 L. Ed.2d 495 (2014).

17. This removal is timely in that it is filed within 30 days after the receipt by Tristar on July 14, 2017 of a copy of the initial pleading setting forth the claim for relief upon which the action is based. 28 U.S.C. §1446(b), 1453(b).

**VENUE IS PROPER IN THIS COURT**

18. Plaintiff alleges that her purported cause of action arose in Linn County, Missouri (see Ex. A, Class Action Petition, ¶ 5). 28 U.S.C. § 1441(a) states, in pertinent part, that “. . . any civil action . . . may be removed . . . to the district court of the United States for the district and division embracing the place where such action is pending.”

19. Accordingly, venue is proper in this vicinage pursuant to Section 1441 (a) because the United States District Court for the Eastern District of Missouri, Northern Division, is the federal judicial district embracing the Circuit Court of Linn County, Missouri, where the State Court Action was originally filed.

**PROCESS**

20. All properly joined and served defendants have consented to this Notice of Removal, and all fees required by law in connection with this Notice have been paid.

21. This Notice of Removal is being filed without prejudice to Tristar's objections and defenses to Plaintiff's purported claims.

22. Written notice of the removal of this action will be promptly served on all adverse parties, and a copy will be filed with the Clerk of the Circuit Court of Linn County, Missouri in accordance with the provisions of 28 U.S.C. § 1446(d).

WHEREFORE, the Defendant, Tristar Products, Inc., respectfully prays that the State Court Action now pending in the Circuit Court of Linn County, Missouri properly be removed to the United States District Court for the Eastern District of Missouri, together with such other and further relief as this Court may deem just, proper and equitable.

Dated: August 8, 2017

Respectfully submitted,

HUSCH BLACKWELL LLP

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*Attorneys for Defendant Tristar Products, Inc.*

**CERTIFICATION**

I certify that a copy of this document was mailed or delivered electronically or non-electronically on this 8<sup>th</sup> day of August 2017, to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

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